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Land rights and justice in neoliberal Mozambique: The case of Afungi community relocations

People should know Mozambique is different now! Now what we have are the locals disrupting things! (email correspondence between author and civil society activist, July 2015)

The image of civil society as a zone of trench warfare between working people and the capitalist state served the left well enough at one moment in history..... But invoking such topographies today can only obscure the real political issues, which unfold on very different ground. (Ferguson 2010: 109)

Introduction

Land exploitation has reached unprecedented levels globally, with land occupied by communities often targeted for redevelopment by companies in the agricultural commodity, extractives and tourism sectors (Hall, 2013; White *et al.* 2012). Mozambique is increasingly the target of large-scale land acquisitions for industrial, gas, coal and agricultural uses. Deals have often involved land currently occupied by communities on insecure and customary tenures, communities which are increasingly asserting their rights against such development. Land grabs, even in the face of protest, are reported across many regions. These include displacements for biofuels in southern and eastern Africa (Moloney and Smith 2010), relocations to make way for biodiversity conservation in southern Africa (Benjaminsen and Bryceson 2012; Büscher and Ramutsindela 2016), protest against mining across Latin America (Bebbington and Bebbington 2016; Burchardt and Dietz 2014; North and Grinspun 2016), and land grabs for tourism redevelopment in Greece (Hadjimichalis 2014). These changes prompt debates over rights and justice: who has the right to the land, who can benefit from resources, and how, and by whom, such decisions are made.

This chapter focuses on one such case; how communities and civil society are contesting land acquisition by the US oil and gas company Anadarko. Anadarko has been granted permission by the Mozambican state to build a gas processing plant on the Afungi Peninsula in Cabo Delgado province in the north of the country. In June 2015, a coalition of civil society activists, communities and their legal representatives took the Government and Anadarko to court to contest the planned relocation of 1,500 existing residents of the site to make way for the plant. The court case, and the campaign leading up to it achieved several important concessions on behalf of the communities scheduled for relocation, especially financial compensation. The campaign has been celebrated by civil society activists as a clear victory leading to a new era of political accountability whereby community needs and rights would hold a central place in Mozambique's resource politics, and where this could be secured through particular right-based strategies of engagement and protest. However, even though the Afungi communities have been able to assert certain legal rights (in this case, a right to compensation and a right to be consulted), they have not been able to prevent their relocation. Nor has this case led to a broader assertion of land rights by the Mozambican state (defined as secure tenure and ownership over ancestral land, or land which has been occupied according to traditional or customary rights), and violent land disputes in Mozambique are escalating.

This chapter uses the case of Anadarko and the Afungi communities to explore how Mozambique's ostensible commitment to rights and its encouragement of 'a good business environment' has provided opportunities for those fighting for community rights to use certain strategies and tactics to great effect, while at the same time, entrenching certain aspects of neoliberal development. Contestation of land deals is often theorised as a simplistic 'expulsion and resistance' dynamic, between 'local communities' on one hand, and large corporate and state interests on the other (Borras and Franco 2013; Ferguson, 2005, 2006; Hall 2011). This implies that victory only means successfully resisting relocation. Yet in articulating a positive politics around community rights to compensation, consultation and due process, civil society activists and communities in the Afungi peninsula have made themselves visible and secured numerous concessions, while also failing to negotiate their ability to remain in place. I consider whether, and in what ways, the Anadarko case constitutes a *victory* for the Afungi communities, and discuss the wider lessons that can be

drawn from this case. I draw on field work in Mozambique in 2013 and 2014 with civil society activists and policy makers involved in land acquisitions, along with analysis of policy reports, legal documents, reports by civil society organisations and records of community meetings. The chapter is structured around four sections: following this introduction, I explain the background to land rights contestation in Mozambique's resources boom, and the controversies caused by Anadarko's proposals. I then discuss Anadarko's attempts at engagement with communities, and how these were radically shaped by the civil society coalition, culminating in the court case of 2015. I then explore what this victory really means in the light of Mozambique's extractives scramble.

Land Grabs in Mozambique's Resources Boom

Mozambique is undergoing a period of intensified natural resource exploitation and export, with state and private actors preoccupied with the development potential of natural resource exploitation. Across the country, mega-projects in a variety of sectors are changing the country's topography. Projects range from the controversial ProSavana soy farming project in Nacala Province which uses Brazilian-style intensive farming techniques (including mono-cropping and use of agro-chemicals), to the coal fields of Tete province, and newly-discovered natural gas sources in Cabo Delgado's coastal waters (the subject of this chapter). These schemes have led to a sustained growth rate over recent years, 7% per year between 2008 and 2015 (World Bank 2013, 2014, undated). Under President Filipe Nyusi (elected in 2015), Mozambique is said to be entering a new era of political maturity characterised by sustainable long-term economic prospects, a reduction in the need for international aid, and a break with the corrupt politics of the recent past (Vines et al. 2015). For a country which remains near the very bottom of the Human Development Index, this resources boom could indeed be extremely significant, if conducted fairly and for the national interest.

However, the resources boom has been intensely contested. Its critics observe a government and a private sector pursuing an extractives agenda regardless of social or ecological outcomes, while often serving personal and private, rather than national interests (CIP 2014; Hanlon 2016; Kirshner and Power 2015; Santos, Roffarello and Filipe 2015). The boom has meant that many communities have lost access to their land in the name of wider

national economic development. Approximately 2.5 million hectares of land have been transferred away from traditional and subsistence-based uses to major international corporations between 2004 and 2009 (Manuel and César 2014, Twomey 2014), and while more recent figures are not available, it is notable that this figure does not even include the 35 million hectares required by Prosavana, the soy project mentioned previously, or the required by Anadarko in Cabo Deglado. These changes often cause conflict with communities. For example, in Tete province, farming and herding communities have been forcibly moved from the 60 million hectare site now occupied by Brazilian coal giant Vale (and its British and Australian partners), while Manuel and César (2014), report over 50 more sites where community land rights and access to livelihoods conflict with planned or existing extractive and industrial uses.

This major land transfer has taken place despite strong legal protections for customary and informal land use. This is land use defined by the Mozambican government as “the occupation of land by individual persons and by local communities, in accordance with customary norms and practices, as long as these do not contradict the Constitution”. Law no. 19/97 of 1 October further states that its purpose is “to ensure the rights of the Mozambican people over the land and other natural resources, and to promote investment in sustainable and equitable use of these resources”. This same legislation states that all land is owned by the state, and land rights are granted to companies, collectives, organisations or individuals under a DUAT (*Direito de Uso e Aproveitamento da Terra*/ right to use and benefit from the land) (Article 10, Mozambique Land Act, No. 19/97). Informal rights where communities have occupied the land for over ten years are also protected. However, in 2014, the Mining Law was revised to establish that economic activities, especially gas and mining, take priority over informal land rights (Article 12 and Article 2, Law no. 20, 18th August 2014). This is intended to act as an incentive to the extractives industry, with similarly favourable revisions for minerals and precious gem extraction (Bloomberg Business News 17 December 2014; EY October 2014). Nevertheless, community rights are still protected under current legislation, and holders of mining permissions are required to consult communities and to provide financial compensation for relocation (whether through the restoration of living standards elsewhere, or through the chance to benefit from the proposed operations) (Mozambican Resettlement Decree of 2012). These

signals from the Mozambican government are ambiguous: although the law clearly protects informal land rights and places obligations on developers, recent history has been of escalating conflicts between communities and projects in which DUATS have been awarded to private interests, while community rights are ignored (Salomão 2015).

It is precisely this gap between legal commitment and practice which civil society activists exploited in the Anadarko case. In 2002, around 20 organisations, ranging from large NGOs, like Action Aid, to small Mozambican civil society groups, formed the Civil Society Platform for Extractive Industries and Natural Resources (CSPEINR) to improve the representation of local communities in the decision-making process around extractives. The secretariat of the platform rotates around its members every two years, and between 2013-2015 it was held by Centro Terra Viva (CTV), a small Maputo-based civil society organization. CTV comprises around 20 staff engaged in community advocacy, legal training and education around environmental issues, with a focus on biodiversity conservation, land use and the extractives sector. Alda Salomão, an environmental lawyer, is CTV's Legal adviser and heads its Environmental Policy and Legislation Program, and has been for several years a very land rights active campaigner in Mozambique. In 2012, Salomão, fellow activists and communities began campaigning against the proposed community relocations. I now turn to discuss the case of Anadarko and the Afungi communities in more detail.

Contesting the world's second-largest liquefied natural gas (LNG) plant

The Afungi Peninsula is located approximately 2000 miles north of Mozambique's capital city Maputo in the province of Cabo Delgado, near to the Tanzanian border (shown in Figure 1 below). Cabo Delgado is the home constituency of President Filipe Nyusi, a Frelimo (Mozambique's ruling party) stronghold with nearly 80% of the vote in 2015. In 2012, Anadarko and partners discovered 100 trillion cubic feet of natural gas in the region's coastal waters, reported as "enough fuel to build the world's second-largest LNG plant" (Bloomberg Business June 14, 2013). The proposals for the plant, which at the time of writing have not yet been constructed, include onshore and offshore extraction and processing infrastructure, along with facilities to keep the gas at very low temperatures for

safe storage and transportation, and support buildings including worker accommodation, offices, and an airport and airstrip, all on a 7,000-acre site secured by a large exclusion area. For the Afungi Peninsula to be remade as this hyper-modern, globally connected gas export zone, it must first be cleared of its existing residents. These include around 1,500 people spread over three villages, namely Quitupo, Maganja and Senga, alongside several hundred more people who live outside of the zone proposed for the plant, but whose livelihoods depend on it (Salomão 2015). Though the region is changing fast, many of these villagers live traditionally, focusing on cashew nut production and fishing for their livelihoods. These communities are deeply concerned about the impact of the gas plant on their livelihoods (Aljazeera, 22 January 2014).

Figure 1: Map of Mozambique showing Afungi Peninsula location



Community concerns can be understood as falling into two broad categories. Importantly, these cannot be reduced to resistance to relocation. The first category centres

on the distribution of benefits from the plant. As Anadarko was able to secure a sympathetic tax agreement under the 2014 Mining Law revision, any immediate benefits to local people depend on being able to secure jobs at the plant or provide services to gas workers, rather than any taxation and public spending. However, communities are unlikely to meet the demands for highly-skilled gas workers. Moreover, experiences in other sites in Mozambique and Africa more widely indicate that local communities tend to be prevented from getting anywhere near the sites, and end up providing informal and low-skilled services such as sex work, rather than finding opportunities to engage in resource production at any significant scale (Ferguson 2006; Kirshner and Power 2015; Human Rights Watch 2013). For the Afungi communities, this is compounded by the threats to existing livelihoods from the destruction of cashew trees and the loss of access to fishing grounds. In essence, they are unlikely to gain from employment at the site, even as their existing source of livelihood is removed. These concerns can be understood as being about distributive justice, defined as being concerned with the distribution of goods or value across a society, and the mechanisms necessary to determine fairness or equity across different social groups (Capeheart and Milovanovic, 2007; Lamont, 2007). This includes communities' calls for rights to protect their livelihoods and to ensure they gain from the proposed plan, rather than see gains simply accrued by state and Anadarko actors.

The second category of community objections concerns the methods by which Anadarko gained its land rights, including its consultation with the local community. Throughout its early stages, agreements around the plant were very secretive, and Anadarko's land rights were originally awarded without any consultation or compensation offers. An informant explained that Anadarko was encouraged by a handful of government officials to bypass the official process:

...I understand the government gave these concessions, but the government was just two or three guys, not really representing the well-being of the whole country, saying; 'yeah, I'll give you leases, whatever... So no democracy. So people in Mozambique say 'well the government gave Anadarko all this land'... Well that wasn't really the government, that was just two or three individuals in high power that can give these concessions (Interview with donor, Maputo, 24 April 2014).

Several other informants confirmed that it has been common practice in Mozambique for government officials and companies to collude in expediting decisions on land allocations

for extractive projects. This can be understood as being about procedural justice, that is, the process by which Anadarko and the Mozambican government worked together to secure the DUAT for the plant. Procedural justice requires a process “that is recognised as being fair, where stakeholders can participate in the process and where their values and preferences are recognised” (Larcom and van Gevelt 2017; Schlosberg 2009). This was evidently not the approach initially taken by Anadarko.

Distributive and procedural justice were both key to the civil society campaign. The campaign prioritised the training of community paralegals through local associations, and established community committees for each of the three affected villages, training members on how to make the most of the consultation that Anadarko was obliged to perform to call for recognition of their rights to compensation and more comprehensive consultation. At several points these committees were successful in shifting Anadarko's interaction with the communities from a superficial to a meaningful process, for example, halting the licensing process in 2013 and 2014 by refusing to grant community consent, effectively bringing Anadarko's project to a temporary stop and threatening their desire to do business in Mozambique (Salomão 2015). The campaign also made regular use of media publicity, thereby publicly questioning Anadarko's claims to corporate social responsibility. Such activities called the Mozambican state and Anadarko to account over their professed commitment to the rule of law and to good business practice.

A full legal challenge was heard in the national courts in June 2015. The case discussed several serious claims, including that Anadarko had not gained community consent for relocation; that communities did not understand why they had to be resettled and what would happen to their livelihoods; that compensation had not been offered; that an Environmental Impact Assessment had not been satisfactorily undertaken; and, that engagement with communities had not been the kind of genuine and substantive engagement required by the 2012 Resettlement Decree. CTV also reported the ongoing police intimidation of activists, community members and paralegals, and the arrest and subsequent release of Salomão under charges of promoting civil disobedience (reported to me in interview with a CTV officer, October 2013 and again in email correspondence, June 2015). These allegations clearly run counter to Anadarko's public commitments to be conducting a responsible, comprehensive and transparent resettlement process.

Although the Mozambican courts found that Anadarko's DUAT was awarded legally, the civil society campaign brought notable benefits for the Afungi communities, and prompted a significant change in approach by Anadarko and the Mozambican government. Anadarko greatly increased its public consultation activity, from the sporadic efforts throughout 2013 and 2014 to a series of extensive consultation meetings, along with setting out how it intends to employ local people and use local services (Mozambique Gas Development Project, Project Description, undated). The Anadarko Chief Operating Office Al Walker publicly met with President Nyusi to reaffirm a joint commitment to good business practice and publicly reject the questionable shortcuts the company had taken earlier (Mozambique Gas Development Project press release, 15 July 2015). Most significantly, a large compensation package for the Afungi communities was announced, including US\$180 million in community payouts; US\$90 million to compensate for the loss of cashew trees and other assets, and US\$90 million to fund the construction of homes, schools, hospitals and access roads in the new town (Mozambique Gas Development Project, 13 July 2015). While this figure is small compared to the US\$212 billion estimated worth of the project, it is nonetheless a significant concession from Anadarko.

While the legal challenge secured a large financial settlement for the Afungi communities along with public acknowledgement of their rights, it has not prevented their eventual relocation. There are therefore two important questions for activists to consider when drawing lessons from the case of Anadarko in Mozambique. First, what made the campaign successful? What strategies and tactics were open to activists and communities, and how are these modes of engagement related to broader trends in land rights activism in different situations? Second, we must also explore the nature of the victory. In successfully leveraging the law to claim their rights to compensation and consultation, communities have ultimately negotiated away their land rights and the legality of Anadarko's DUAT has been confirmed. What, then, constitutes success in a situation where the communities will still be relocated? In the next section, I consider what this case means for land rights campaigners against neoliberal economic development more widely.

Community activism for a neoliberal era

Anadarko's proposals, and wider contemporary policy developments in Mozambique are identifiably neoliberal: they exemplify the production of wealth from the privatisation of common resources, the production of new regulations by the state which promote the needs of the private sector (reregulation), and the creation of new spaces, whereby some people and natures are connected to global capital networks, and others are dispossessed (Harvey 2005; Moore 2015). A variety of forms of power and control are necessary to dominate, coerce and encourage people to go along with these neoliberal reforms. These include authoritarian tactics, such as arrest, eviction, detention and intimidation by state agents like police, and softer methods like consultation, designed to persuade activists and communities that given proposals are in their own or the broader national 'best interest' (see Apostolopoulou *et al.* 2014 and Hönke 2013 for discussions of different uses of consent and coercion in neoliberalising contexts). By the same token, opposition to neoliberalism can also take many forms, ranging from directly contesting dispossession by refusing eviction in land disputes, to subverting the original intention of neoliberal reforms in day-to-day practices (Butler and Athanasiou 2013; Ferguson 2010). In understanding what makes the Afungi case relevant to activists, it is important to consider how neoliberalisation processes open new strategies and discourses for different actors to achieve particular ends, and how these might be mobilised to protect citizen's land rights. Neoliberal processes, even as they reinforce certain pathways of uneven development, can also provide new ways for marginalised groups to articulate and press their claims.

The first observation for activists is that the civil society coalition's successful interruption of Anadarko's proposals was achieved through giving the community access to legal advice, and training community members themselves to act as paralegals, able to assert their own rights in line with existing Mozambican law. This gave Afungi communities legal representation, and prevented the government from conducting questionable legal fixes (as it attempted to do at the outset of the scheme). Giving poor communities voice and power forced the Mozambican state to recognise their rights, and put pressure on authorities to act in accordance with the law. The campaign was contingent on an existing progressive land law in Mozambique: rather than agitate for legislation to protect communities in the

first instance, CTV activists were able to ask that existing rights be enforced, an approach that the organization intends to use in other cases in Mozambique as part of a wider campaign to encourage the government to better incorporate rural and urban poor in redevelopment decisions. In this sense, the campaign was primarily targeted at the enforcement of the existing legislation, cementing the state as a player that should be central in activists' minds when considering their strategies. Activists can thus achieve significant results where legal regimes which protect informal community rights are in place, leveraging these regimes to put pressure on authorities and companies.

The campaign also indirectly challenged Anadarko's reputation and its public commitment to corporate social responsibility, and led the company to question its involvement in Mozambique. At several stages in 2013 and 2014, there were media rumours that the company was intending to pull out of the country over difficulties in doing business, to the obvious detriment of the state and the company which both desired to gain benefits from exploiting the large and potentially lucrative gas find (AllAfrica 17 September 2013). The activities of CTV, other civil society organisations and the communities thereby invoked global liberal norms in order to threaten Anadarko's reputation. They exploited Anadarko's and the Mozambican government's commitment to legal process and the establishment of stable business conditions, encouraged under the 'trade not aid' investment and development regime (that is, the dominant idea in international development that poor countries' route out of poverty lies in international trade rather than aid). This suggests that corporate reputation, and broader visions of trade-led development provide key leveraging points.

However, it is also significant that the Afungi communities are still due to be relocated. Despite the significant concessions awarded to them, it is notable that the renewed effort on community consultation has not tabled the possibility of remaining in place. For Anadarko and the state, the relocation is taken for granted and the consultation material focusses on issues such as compensation and restoration of livelihoods elsewhere. It is also important to note that some activists continue to highlight problems with the consultation approach and compensation scheme. The CESPINR recently reported that the compensation figure has not been fairly allocated, and that the project's promises regarding local employment and benefits are unrealistic (Mimbire and Nhamirre 2015). There is still

ongoing, low-level harassment of activists, and community activists are still presented as being ‘against development’, painted as enemies of the national public good (interview with CTV officer, June 2015). There are, therefore, ongoing personal risks to activists protesting against the impacts of Mozambique’s resources boom. In this sense, CTV’s victory of 2015 has been superseded by ongoing contestation, and reassertions of power by the state and private interests in pursuit of neoliberal economic development.

The ongoing situation in Afungi compares to others in Mozambique. Of the 20 Mozambican cases of activism against extractive projects currently recorded on the Environmental Justice Mapping Database¹, only one is reported to be a clear success – the Pande and Temene Gas Field in central Mozambique, where activists were successful in preventing the scheme from being registered as part of the Clean Development Mechanism (CDM), on the grounds that this would be an incorrect application of CDM investment rules. The Pande case is thereby also an example of environmental and civil society organisations leveraging the application of existing regulations, akin to the Anadarko case. However, all other 19 Mozambican cases currently active have not been reported as successes due to the fact that, regardless of any concessions gained for communities, the contested projects have not been permanently halted. An increased focus on community rights and corporate reputation has not translated to a permanent cessation of any of these projects, so far.

In light of this wider context, activists must therefore also question what they mean when they claim that there is a new era of community assertiveness in Mozambique. CTV and the Afungi communities have adopted a pragmatic approach to defining success. Specifically, success does not necessarily mean halting the relocations. Indeed, as some communities have reported, they do not necessarily *want* the proposals halted. Rather, they seek both procedural and distributive justice in the context of Mozambique’s economic development: compensation for loss of land and livelihood, and recognition of their rights in the decision-

¹ The database is a teaching, networking and advocacy resource which collates cases of activism and protest against damaging projects, especially the extractives industry, from across the world. It can be viewed at <https://ejatlas.org>

making process. This involves reclaiming ideas of national development, and putting forward a wider vision of fairness and development in the interests of the public good. The broader success enjoyed by CTV and the civil society coalition has therefore been to establish pathways to make citizens' rights visible, bringing the dispossession often suffered by poor communities into the foreground.

Conclusion

Extractive capitalist projects in Mozambique are leading to escalating political contestation, especially around the resettlement of local communities. The rise in civil society activism, centred on rights-based discourses, represents an important emerging trend which is bringing community rights onto the development agenda. The case of Anadarko in Cabo Delgado has demonstrated the power of a politicised approach from civil society activists which emphasises the relationship between expanded capitalist accumulation at a global scale and environmental dispossession suffered by poor and marginalised communities. By giving legal representation to communities, citizens have been empowered to seek greater procedural and distributive justice from a scheme which was initially imposed unfairly and secretly.

CTV activists demonstrated a creative approach, using Mozambique's existing progressive land laws along with media and community awareness as leverage to ensure the rights of Afungi communities were respected. In particular, they were successful in mobilising and empowering communities to speak on their own behalf using community paralegals to conduct training. This strategy secured notable successes, including temporarily halting the project, greater consultation for affected communities, and securing commitment to a large financial package to compensate for livelihood losses (although it is significant that this redress package is still being questioned by communities). All these concessions were specified by Mozambican law, demonstrating the effectiveness of a rights-based approach in situations where the necessary legislation exists but is not being implemented. In this sense, CTV's approach has been highly effective in a neoliberal era where the production of stable business environments and 'trade not aid' development discourses dominate, and where land deals involve transnational actors like Anadarko which can be influenced by threatening their public reputation.

I started this chapter with two quotations. The first was from a CTV activist celebrating the beginning of a new political era in Mozambique, where communities are newly empowered in ensuring their rights are respected within the context of the resources boom. Undoubtedly, communities and activists were able to take a major step in securing substantive gains for the Afungi residents. And, in this sense, the Afungi citizens have fought to make themselves visible as a means of counteracting predatory extractive processes. However, this was achieved through making communities present within a wider neoliberal system, rather than shutting down the proposals from the 'outside' or from 'below'. To return to the second quotation which began this chapter, Ferguson asks us to dispense with the simplistic notion of civil society activists engaged in warfare against a neoliberal state on behalf of working people, and consider the new and contested political terrains that activists engage on. In this case, those opposing land grabs have increasingly chosen to adopt the very same political discourse and strategies that the extractives companies used to pursue and legitimise their agendas, and to seek gains for communities within this framework. Communities and activists have not necessarily disputed the broader economic development goals and projects pursued in Mozambique; rather, they are using the law to state that they are due their fair share of gains. While this position has, so far, provided some success, it has also legitimised a wider set of development norms that underpin Anadarko's claims to exploit the land, namely the principles of private property which underpin notions of distributive justice, and notions of legal process and the rule of law which sit behind procedural justice. This case thus puts the notion of 'victory' at the centre of the debate: as I have noted, Anadarko's plans, as with many other mega-projects in Mozambique have not been halted. As land acquisitions in Mozambique intensify, activists and community victories may find that concentrating their attention on ensuring both procedural and distributive justice for relocated communities provides productive political terrain, even as such activities endorse wider capitalist development dynamics.

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